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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-283

13 DARRELL THOMAS OPPERMAN
2229 Gracey Lane
14 Fallbrook, CA 92028

A C C U S A T I O N

15 Registered Nurse License No. 508347
Nurse Anesthetist License No. 2549

16 Respondent.
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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about February 10, 1995, the Board of Registered Nursing issued
24 Registered Nurse License Number 508347 to Darrell Thomas Opperman (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2010, unless renewed.

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3. On or about September 23, 1999, the Board of Registered Nursing issued Nurse Anesthetist License Number 2549 to Respondent. The Nurse Anesthetist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

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(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

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8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

....

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1444, states:

3 A conviction or act shall be considered to be substantially related to the
4 qualifications, functions or duties of a registered nurse if to a substantial degree it
5 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

6 (a) Assaultive or abusive conduct including, but not limited to, those
7 violations listed in subdivision (d) of Penal Code Section 11160.

8 (b) Failure to comply with any mandatory reporting requirements.

9 (c) Theft, dishonesty, fraud, or deceit.

10 (d) Any conviction or act subject to an order of registration pursuant to
Section 290 of the Penal Code.

11 12. California Code of Regulations, Title 16, section 1445 states:

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13 (b) When considering the suspension or revocation of a license on the
14 grounds that a registered nurse has been convicted of a crime, the board, in
evaluating the rehabilitation of such person and his/her eligibility for a license
will consider the following criteria:

15 (1) Nature and severity of the act(s) or offense(s).

16 (2) Total criminal record.

17 (3) The time that has elapsed since commission of the act(s) or
18 offense(s).

19 (4) Whether the licensee has complied with any terms of parole,
20 probation, restitution or any other sanctions lawfully imposed against the licensee.

21 (5) If applicable, evidence of expungement proceedings pursuant
to Section 1203.4 of the Penal Code.

22 (6) Evidence, if any, of rehabilitation submitted by the licensee.

23 **COST RECOVERY**

24 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
25 request the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(August 20, 2003 Conviction of Violations of the Uniform Code**
3 **of Military Justice on September 15, 2002)**

4 14. Respondent has subjected his license to disciplinary action under sections
5 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
6 substantially related to the qualifications, functions, and duties of a registered nurse. The
7 circumstances are as follows:

8 a. On or about August 20, 2003, in General Court-Martial and Action
9 #87-04, at the United States Marine Corps Base Camp Pendleton in San Diego County,
10 Respondent, who was a Lieutenant Commander in the U.S. Navy, was convicted on the findings
11 of violating Article 92 of the Uniform Code of Military Justice (UCMJ): (1) dereliction of his
12 duties, and (2) failure to obey a lawful order; Article 111, UCMJ: physically control a vehicle
13 while drunk; Article 112, UCMJ: drunk on duty; and Article 134, UCMJ: wrongfully and
14 recklessly engage in conduct that was likely to cause death or serious bodily harm (two
15 specifications), and being incapacitated for the proper performance of his duties as a result of
16 wrongful overindulgence in intoxicating liquor.

17 b. As a result of the conviction, on or about August 20, 2003, the
18 military judge sentenced Respondent to dismissal from the U.S. Navy, confinement in the brig
19 for nine months, and forfeiture of \$2,000 pay per month for a period of nine months. Pursuant to
20 a pre-trial agreement, execution of the confinement and forfeiture of pay was rescinded for a
21 period of 12 months from the date of the convening authority's action.

22 c. On or about June 29, 2006, following a review of the conviction in
23 the U.S. Navy-Marine Corps Court of Criminal Appeals, in the matter of *United States of*
24 *America v. Darrell T. Opperman*, Case No. 200500012, a three-member panel issued a decision
25 upholding the original findings and sentence.¹ Respondent appealed the decision and filed a
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27 1. The panel observed in its decision that in May 2001, Respondent received nonjudicial
28 punishment for operating a vehicle aboard Camp Pendleton with a blood alcohol content of
0.298 percent.

1 petition for grant of review in the United States Court of Appeals for the Armed Forces, in case
2 no. 06-0731/NA. On or about October 11, 2006, the appeal court denied Respondent's petition.
3 Respondent's dismissal from the U.S. Navy was effective on March 1, 2007.

4 d. The facts that led to the conviction were that on or about
5 September 15, 2002, Respondent was the duty nurse anesthetist at the Camp Pendleton Naval
6 Hospital. Following numerous pages to his duty pager, Respondent reported for work drunk,
7 having previously overindulged in intoxicants while in a duty status. Witnesses observed that
8 Respondent was intoxicated, however he continued to administer anesthesia and make
9 adjustments to anesthesia on patients who were in labor until he was relieved of his duties. Once
10 it was determined that Respondent was too intoxicated to drive himself, he disobeyed a direct
11 order and drove a truck from the base to an Oceanside Travelodge.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct - Dangerous Use of Intoxicants)**

14 15. Respondent has subjected his license to disciplinary action under section
15 2762, subdivision (b) of the Code in that on or about September 15, 2002, Respondent reported
16 for duty while under the influence of an alcoholic beverage, such conduct being dangerous and
17 injurious to himself and the public. Respondent was unsafe to practice nursing yet continued to
18 do so, as described in paragraph 14, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Conviction of an Alcohol-Related Criminal Offense)**

21 16. Respondent has subjected his license to disciplinary action under section
22 2762, subdivision (c) of the Code in that on or about September 15, 2002, as described in
23 paragraph 14, above, Respondent was convicted of a criminal offense involving the use of
24 intoxicants, which constitutes unprofessional conduct.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

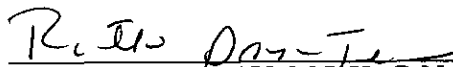
4 1. Revoking or suspending Registered Nurse License Number 508347,
5 issued to Darrell Thomas Opperman;

6 2. Revoking or suspending Nurse Anesthetist License Number 2549, issued
7 to Darrell Thomas Opperman;

8 3. Ordering Darrell Thomas Opperman to pay the Board of Registered
9 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3;

11 4. Taking such other and further action as deemed necessary and proper.

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13 DATED: 5/11/09

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15 
16 RUTH ANN TERRY, M.P.H., R.N.
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

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